IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

: J U D G M E N T :

S.B. Civil First Appeal No.1/1989.
(Jagatjit Cotton Textile Mills Ltd. Vs. Union of India)

DATE OF JUDGMENT : July 27th , 2007

P R E S E N T

Hon'ble Mr. Justice Gopal Krishan Vyas

Mr. S.L. Jain for the appellant.
Mr. M.S. Singhvi for the respondent.

BY THE COURT :

By this regular first appeal, appellant Jagatji Cotton Textile Mills Ltd., Sriganganagar seeks to challenge the judgment and decree dated 11.08.1988 passed by the the Addl. District Judge No.2, Sriganganagar (in short, "the trial Court" hereinafter) in Civil Original Suit No.108/85 (28/83) whereby the trial Court dismissed the suit of the plaintiff-appellant for recovery of Rs.26,778/-.

According to the contentions advanced in the suit filed by the appellant against the Union of India – through, General Manager, Northern Railways, it is alleged that the appellant company is a firm registered under the Companies Act having its office at Chohal (District Hoshiarpur) and the company is having one unit at Sriganganagar also for manufacturing cloth. The plaintiff purchased 37.2 metric tonnes of steam coal from M/s Jain Coal Sales, Jharia for Rs.18,600/- and the price was paid by the plaintiff. The seller of the goods booked the said

quantity of steam coal through invoice No.77 and 78 vide railway receipts No.399565 and 399566 on 17.04.1980 from Tilrath station to Sriganganagar in railway wagon No.SC/17405.

The plaintiff further submitted that the aforesaid goods did not reach Sriganganagar nor it was delivered to the plaintiff. It is contended in the plaint that it was the responsibility of the respondent Railways to deliver the steam coal in safe condition to the plaintiff but due to the negligence of the authorities, the wagon could not reach its destination and thereby the respondent-defendant failed in delivering the steam coal to the plaintiff.

The plaintiff approached the railway authorities at Sriganganagar but no reply was given. A representation under Section 78B of the Indian Railways Act was submitted and price of the coal was demanded with interest, loss of which the plaintiff suffered due to non-supply of the coal. However, the Railway authorities only sanctioned claim of Rs.1,866/- and offered the same vide two pay-orders for Rs.933/- each. The plaintiff accepted this amount under protest.

After the aforesaid amount was sanctioned to the plaintiff towards claim, after serving notice under Section 80, C.P.C. on 09.04.1982 the suit was filed for the remaining amount alongwith 18% interest and, in all, a sum of Rs.26,778/- was pressed for claim alongwith cost of the suit.

After notices were served in the suit, the respondent-defendant filed written-statement and submitted that the suit has not been filed by the competent person and denied that 37.2 metric tonne of coal was booked and it was also denied that the price of the coal amounting

to Rs.18,600/- was paid by the plaintiff to M/s Jain Coal Sales, Jharia. The defendant submitted that the coal was sent on owner's risk. It was however admitted that notice under Section 78B was received but this notice was not a legal notice. The defendant claimed in the written-statement that all the claim which was due was paid vide two pay-orders for Rs.933/- each. After filing of the written-statement by the defendant Railways, the trial Court framed the following issues for adjudication :

> "(1) आया फर्म वादी रजिस्टर्ड कम्पनी है और श्री एम.एम. भण्डारी इसकी ओर से वादपत्र प्रस्तुत करने के अधिकारी हैं ?
>
> (2)आया बिल्टी सं० 399566 व 399565 द्वारा भेजा गया कोयला 37.2 मैट्रिक टन था ?
>
> (3)आया बिल्टियों द्वारा भेजे गए माल की कीमत 18600/= रू० वादी पाने का अधिकारी है ?
>
> (4)आया वादी द्वारा 1866 रू० का भुगतान पूर्ण व अंतिम निपटारे में स्वीकार किया गया इसलिए वादी कोई वाद प्रस्तुत करने का अधिकारी नहीं है ?
>
> (5) आया वादी उपरोक्त राशि पर 18 प्रतिशत ब्याज 10,044 रू० पाने का अधिकारी है ?"

Out of the aforesaid six issues, issues No.2, 3, 4 and 5 were decided against the plaintiff and consequently suit of the plaintiff was dismissed vide impugned judgment dated 11.08.1988.

Learned counsel for the appellant argued that the learned trial Court committed an error while dismissing the suit. It is submitted that while deciding issues No.2, 3, 4 and 5 the trial Court grossly erred because in the reply the booking of coal was not denied and by documentary evidence placed on record the plaintiff proved that 37.2 metric tonnes of coal was booked vide receipts No.399565 and 399566 and the said steam coal never reached its destination, therefore, it was the duty of the defendant Railways either to supply the material or to

pay the cost of the coal to the consignee, however, neither the coal was delivered to the consignee nor the cost was paid to it. Learned counsel for the appellant vehemently contended that the trial Court committed serious illegality in recording finding against the plaintiff which is perverse on the face of record.

It is argued by learned counsel for the appellant that there is clear admission of the railway authorities that freight was charged by the Railways for booking and transporting the aforesaid 37.2 metric tonne of steam coal but it is denied that they are liable to pay the cost of the material. It is contended that the learned trial Court has clearly ignored this aspect of the matter that the railway authorities are estopped from claiming that they are not liable to pay the cost of the coal or to supply the coal which was booked. It is obvious from the railway receipts that the endorsement and documents were issued by the Railways, therefore, the party having once made admission cannot go behind and challenge the admission. The railway authorities cannot travel from the responsibility for the safe delivery of the goods booked by the consignor when the price of the coal weighing 37.2 metric tonnes was paid by the consignee. Therefore, the Railway authorities are liable either to hand over the steam coal or to pay the cost. However, the learned trial Court ignored the material evidence placed on record, therefore, the appellant is entitled for decree of the suit against the Railways and, so also, it is entitled to recover full cost of coal alongwith interest for delayed payment.

It is argued that in this case according to written-statement, Rs.1,866/- was paid as claim of the appellant and, according to written-statement, the claim was settled by the appellant for Rs.1,866/-; but,

in fact, this fact is not correct and the said amount was accepted under protest by the appellant. It is submitted that the learned trial Court disbelieved the documents and statements made by the witnesses which amply proved that price of coal was paid by the plaintiff to M/s Jain Coal Sales.

It is further argued that cost of goods is irrelevant for the purpose of arriving at the finding because after consignment of the steam coal the coal was to reach the consignee in any case. But, the learned trial Court failed to appreciate this aspect of the matter and ignored material evidence in the case. It is contended by learned counsel for the appellant that the impugned judgment is based on surmises and conjectures whereas the admitted position of the case was not considered properly by the trial Court.

Per contra, learned counsel for the respondent argued that though M/s Jain Coal Sales, Jharia sent the coal under invoice No.77 and 78 vide railway billty No.399565 and 399566 dated 17.04.1980 but whether that coal was in fact loaded in the wagon or not is not acceptable nor it is proved by the plaintiff that it was first grade steam coal. It is contended on behalf of the respondent that the plaintiff is not owner of the goods and it had not paid Rs.18,600/- towards price of coal to M/s Jain Coal Sales, Jharia and, therefore, the plaintiff firm is only endorsee and not owner of the goods. It is argued that being only the endorsee the plaintiff firm cannot bring suit claiming cost of the goods. Learned counsel for the respondent further contended that the alleged coal was sent on owner's risk, therefore, there is no question of the responsibility of the Railways to pay the damages. It is argued that if any commodity is booked at Tilrath then it can be delivered by the

Railways at least after one month at Sriganganagar, therefore, the contention of the plaintiff is baseless that the coal was to reach at Sriganganagar with 6-7 days. It is contended by learned counsel for the respondent that towards final settlement of the plaintiff's claim an amount of Rs.1866/- was offered vide two pay-orders of Rs.933/- each which the plaintiff accepted and, thereafter, the plaintiff is not entitled to get any further amount as compensation for cost of coal.

It is contended by learned counsel for the respondent that if the material was not delivered to the appellant then for full cost of the material the Railway cannot be held responsible. Once the final settlement of the claim was arrived at and, at that time, the plaintiff did not raise any objection and accepted the amount of compensation paid in final settlement of the claim, the controversy sets at rest and it cannot be revived for a fresh claim. Learned counsel for the respondent further argued that the coal was sent on owner's risk and it was not weighed by the Railway nor it was put in the wagon by the Railway officials, therefore, the suit was rightly dismissed by the trial Court.

I have considered the rival submissions and carefully scanned the record. I have also perused the impugned judgment.

Issue No.1 was decided in favour of the appellant-plaintiff and the finding of the trial Court on issue No.1 is not under challege in this appeal.

With regard to issue No.2, the burden to prove this issue was upon the plaintiff. The trial Court decided this issue in favour of the defendant Railways and held that the plaintiff has failed to prove whether 37.2 MT of steam coal was sent by M/s Jain Coal Sales, Jharia

to the appellant, however, the trial Court accepted that billty No.933565 and 933566 was issued by the Railways. It may be observed in this case that the Railways – an instrumentality of the State has taken almost dishonest plea before the Court and the same was considered by the trial Court whereas material facts relating to the consignment in question have been admitted by the defendant Railways. It is not disputed that the aforesaid billty was issued by the Railways in which the weight of coal is mentioned 37.2 MT and it is also not disputed that freight was charged from the consignee. It is also admitted position that the said coal did not reach Sriganganagar. The Railway authorities also do not dispute that the wagon was booked for sending coal having weight of 37.2 MT but only on the ground that it was not weighed in the presence of railway officials the Railways seeks to deny the claim of the plaintiff consignee. Moreover, the defendant Railways accepted the claim of the plaintiff firm in principle and has offered Rs.1866/- towards final settlement of the claim. Thus, the claim of the plaintiff to the compensation is admitted by the defendant but on the ground of quantification of the claim the Railways has resisted the suit. Therefore, upon documentary and oral evidence when booking of the goods is not disputed, charging of freight is not disputed nor issuance of billty is disputed which necessarily involves weight of the goods to be mentioned in the receipts, then, thereafter, the Railways is estopped from taking the plea that weight of the goods was not taken in the presence of the railway officials. In the entire record, it is nowhere stated by the Railways that any information with regard to lesser quantity of coal was given by any of the parties. The trial Court, however, held that coal was not weighed in front of the

railway authorities therefore the Railways is not liable to make the payment. In my opinion, once freight is charged for 37.2 MT and billty was issued accordingly then, obviously, it will be presumed that such material was booked at Tilrath and was to be delivered at Sriganganagar to the consignee. Though the wagon reached Sriganganagar but the goods was not there in the wagon. In these facts and circumstances, therefore, the learned trial Court has wrongly decided issue No.2 in favour of the Railways holding that it is not proved by the plaintiff that steam coal having weight of 37.2 MT was loaded in the wagon. There is material perversity in the finding of the trial Court on this issue and belies the evidence on record. The finding cannot be sustained and deserves to be set aside. The plaintiff has sufficiently discharged the burden to prove that 37.2 MT of steam coal was booked and it did not reach the destination.

With regard to issue No.4 whether Rs.1,866/- was accepted by the plaintiff towards final settlement of the claim, therefore, the plaintiff is not entitled to file the suit. For this issue, the burden was upon the respondent-defendant. According to the respondent, the Railways paid full claim while making final payment of Rs.1,866/- and it was accepted without any objection. In view of Ex.-11 which is on recrd, letter dated 14.04.1981, it is clear that after receiving two pay orders of Rs.933/- each, immediately the said letter was sent to the Chief Commercial Superintendent, Railways that the firm is taking such amount under protest. The said document was proved before the Court, therefore, the finding arrived at by the trial Court that the Railways has proved that final payment of Rs.1866/- was arrived at in between the parties is erroneous. The Railways did not show at the

trial of the suit how this amount was arrived at and reckoned for final settlement. Therefore, the basis of assessment of claim at Rs.1866/- is totally baseless and arbitrary and has no foundation. More so, when it is nowhere disputed that the billty was issued and freight was received by the Railways. In these facts and circumstances, the Railways cannot escape the liability to pay compensation for the quantity of coal in respect of which billty was issued and freight was charged. The Railways cannot take plea that goes against its own record.

With regard to issue No.3 whether the cost of material which is sent through the billty was Rs.18,600/-. For this purpose, it is clear that freight was charged for 37.2 MT coal and two billties were issued for the same and the plaintiff appellant filed Ex.-9, bill of cost of coal in which it is clearly mentioned that cost of coal is Rs.18.600/- alongwith ledgers. The said amount was paid to the consignor. Therefore, without disbelieving those documents it cannot be said that the cost of coal was not Rs.18.600/-. The trial Court has only observed that the bills were issued on 20.04.1980 whereas the coal was booked on 17.04.1980; but, at the time of deciding this issue the learned trial Court has lost sight of the fact that bullties were issued in the name of the plaintiff appellant and bills issued on 20.04.1980 would not form basis for the finding arrived at by the trial Court. If the bills and ledgers produced are found incorrect then, of course, the cost may not be accepted. The trial Court has accepted the evidence of the documents on record. Therefore, the finding arrived at by the trial Court on this issue is not correct and the same cannot be sustained. The finding arrived at by the trial Court on issue No.3 is set aside. The plaintiff has proved by documentary evidence that cost of coal was

Rs.18.600/- paid to the consignor.

With regard to issue No.5, for payment of interest, it is clear that the Railways did not contest the suit with clean hands and took shelter of untenable pleas which belie the documents admitted by the defendant. Obviously, it was the responsibility of the Railways either to deliver the goods or, in the event of loss or damage, pay the cost of the material for which freight was charged and billties were issued by it. In the facts and circumstances of the case, the plaintiff is entitled to interest at the rate of 9% p.a. for delayed payment. The finding of the trial Court on this issue is accordingly set aside.

In the result, this appeal is allowed. The impugned judgment and decree is set aside. The suit of the plaintiff appellant is decreed in its favour against the respondent-defendant for recovery of Rs.16,734/- (principal amount). The appellant-plaintiff is also entitled to get interest upon this amount at the rate of 9% p.a. from the date of filing of the suit till realization.

No order as to cost.

(Gopal Krishan Vyas) J.

Ojha, a.